

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff(s),

CRIMINAL NO. 14-232 [1] (DRD)

v.

JAMES FONG HERRERA [1],

Defendant(s).

**ORDER APPROVING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION RE: RULE 11 PROCEEDINGS**

The Court has evaluated the Magistrate Judge's Report and Recommendation of the Rule 11 proceedings regarding defendant contained in the Report and Recommendation, Docket No. 31.

The principal consideration is whether that plea was knowingly, voluntary and intelligently made within the terms of Rule 11, United States v. Isom, 85 F.3d 831, 835-837 (1<sup>st</sup> Cir.1996). In order to ascertain whether defendant made a knowingly, voluntary and intelligent plea, the United States Court of Appeals for the First Circuit has identified three core concerns: absence of coercion, defendant's understanding of the charges and the defendant's knowledge of the consequences of the guilty plea. United States v. Gray, 63 F.3d 60-61 (1<sup>st</sup> Cir.1995), United States v. Cotal Crespo, 47 F.3d 1, 4 (1<sup>st</sup> Cir.1995), *cert. denied* 516 U.S. 827 (1995).

The Court in examining the three core concerns must "review the totality of the circumstances surrounding the Rule 11 hearing, rather than apply a 'talismatic test,'" United States v. Cotal Crespo, 47 F.3d at 4-5.

The Court having examined the Report and Recommendation of the Magistrate Judge finds that the plea entered by the defendant was knowingly, voluntary and intelligent as understood in the terms of Rule 11. The plea of defendant is therefore, accepted and the defendant is adjudged guilty as to Count Two of the Indictment.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 18th day of August, 2014.

s/Daniel R. Domínguez  
DANIEL R. DOMINGUEZ  
United States District Judge